IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

Crl.MC.No. 342 of 2007()

AGAINST THE ORDER DATED 22/01/2007 IN IN STC 2277/2004 IN CRMP.507/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TALIPARAMBA

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PETITIONER:

M.D.SHINTO, S/O.M.D.DEVASSIA,
31 YEARS, MELAMURIYIL VEEDU,
ORKKAYAM, NADUVIL (PO), NADUVIL, KANNUR.

BY ADV. SRI.PROMY KAPRAKKATT
SRI.K.N.ABHILASH

RESPONDENTS: STATE/COMPLAINANT

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1. THE STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR OF THE HIGH COURT OF
KERALA, ERNAKULAM.

2. GEORGEKUTTY AUGUSTINE,
S/O.AUGUSTINE, AGED 40 YEARS,
PUTHENPURAKKAL VEEDU, ORKKAYAM, NADUVIL
THALIPARAMBA TALUK, KANNUR.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 342 of 2007

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Dated this the 12th day of February, 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the N.I. Act. The complainant was represented by a Power of Attorney Holder. He examined himself as a witness. Later the complainant filed an application for permission to appoint himself also as a witness. That permission was granted invoking the powers under Section 311 Cr.P.C. The petitioner has come to this Court complaining about the grant of the said prayer.

2. What is the grievance? The learned counsel for the petitioner submits that the petitioner was obliged to file the counter statement to that application on 22.1.2007. On the same day the learned Magistrate proceeded to pass the impugned order. Though the order shows that the petitioner has been heard, in fact he was not heard.

3. I have considered the nature of the request. The request for permission of the complainant to examine himself also, does appear to me to be absolutely justified. The complainant has explained the

circumstances under which he was obliged to make such a request at the later stage of the trial. The grievance that the petitioner was not heard does not appear to be justified as the counter statement was filed, hearing was conducted and the impugned order was passed, all on 22.1.07. A separate posting for hearing in a matter like this after filing the counter statement does not appear to be necessary or invariable. The petitioner cannot reasonably insist on such a further posting for hearing. In any view of the matter, I am not persuaded to agree that this is a fit case where the powers under Section 482 Cr.P.C. can or ought to be invoked. The crucial question is, has justice failed and that question has got to be answered against the petitioner. The impugned order does not warrant any interference under Section 482 Cr.P.C.

4. This Crl.M.C. is accordingly dismissed.

(R. BASANT)
Judge

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